

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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Submitted via e-mail: Victoria.Wachino1@cms.hhs.gov

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Victoria Wachino, Director
Center for Medicaid and CHIP Services
Department of Health and Human Services
Attn: CMS-2327-FC
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Ms. Wachino,

I am writing on behalf of the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS) to request that CMS consult with TTAG and Tribes on the application of the 100 percent tribal FMAP rule. We understand that CMS is currently reviewing CMS policy on the application of the 100 percent tribal FMAP rule with regard to state claiming for reimbursable expenditures generally, and specifically in the context of various waiver models currently being discussed as well as its implication for Medicaid expansions implemented under section 2001 of the Patient Protection and Affordable Care Act in various states. The 100 percent tribal FMAP rule is critically important to tribes, and we write to stress the need for CMS to consult with TTAG and Tribes before it makes any policy decisions regarding the scope of the rule.

Congress enacted Section 1905(b) of the Social Security Act to establish a 100% federal medical assistance percentage (FMAP) that broadly applies to all Medicaid payments for services received through the Indian Health Service or an Indian tribe or tribal organization. It provides, in relevant part, that:

*Subject to subsections (y), (z), and (aa) and 1396u-3(d) of this title, the term “Federal medical assistance percentage” for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, **Notwithstanding the first sentence of this section**, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25). ...*

42 U.S.C. 1396d(b)(emphasis added).

This provision was enacted in recognition of the federal responsibility to provide health care to American Indians and Alaska Natives. It is critical to improving relationships between tribes

and state governments, and will help keep any perceived costs to the States of implementing Medicaid expansion to a minimum, particularly in those States that have large numbers of American Indians and Alaska Natives. It has been estimated that State funding for the Medicaid expansion population will be reduced, on average, by 15 percent due to the 100 percent FMAP rule.

Section 2001 of the Affordable Care Act, which established the new FMAP rule for the Medicaid expansion population in new subsection 1905(y) did not disturb the general 100 percent FMAP rule for Indians in subsection 1905(b). The TTAG was pleased to see that CMS implemented its new FMAP rules for the Medicaid expansion population (CMS-2327-FC) in a manner that did not disturb the general 100 percent FMAP rule for Indians in the Medicaid expansion population. As indicated in the attached letter, though, the TTAG requested consultation with CMS on any guidance it might develop with regard to the continued application of the 100 percent FMAP rule in Medicaid expanding states.

More generally, the TTAG believes that prior CMS general guidance on the application of the 100 percent FMAP provisions is more restrictive than that provided in specific instances, and the TTAG welcomes a revisiting of the general statements of policy. However, because the application of this rule is so significant to IHS and tribal health programs, the TTAG believes that consultation with it and Tribal leadership should occur prior to, and throughout the development of any revisiting of existing policies or implementation of new policy.

We write to reiterate our request that CMS engage with the TTAG and with Tribes through government-to-government consultation before it proposes any changes to policies or guidance that implicate the breadth and scope of the 100 percent FMAP rule for tribes.

We look forward to discussing this critically important issue with you as soon as possible.

Sincerely,



W. Ron Allen,
Tribal Chairman and CEO, Jamestown S'Klallam Tribe
Chairman, TTAG

Cc: Dee Sabattus, TTAG Co-Chair
Robert McSwain, Acting Director, IHS
Kitty Marx, Director, Tribal Affairs Group